

The Environmental Cooperation Pilot Program: 1999 Progress Report

Section 299.80, Wisconsin Statutes that authorizes the Environmental Cooperation Pilot Program also requires an annual report on the progress of this program. This report will describe activities undertaken as part of the Environmental Cooperation Pilot Program during the period from November 1998 through October 1999. This is the second progress report in the series, the first being issued on November 2, 1998. A brief description of the Environmental Cooperation Pilot Program follows:

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Governor Thompson introduced the Environmental Cooperation Pilot Program as part of the 1997-1999 Biennial Budget. It is designed to evaluate innovative environmental regulatory methods.

Under this program WDNR can enter into up to ten Cooperative Environmental Agreements in the next five years with persons who own or operate facilities required by law to be covered by licenses or permits. An environmental management system based on the ISO 14001 standard (or equivalent) forms the basis for whole-facility regulation.

The intent of agreements is to establish superior environmental performance and reduce administrative burdens by superseding administrative requirements of permits and approvals specified in the agreement. Agreements are designed to promote the reduction of overall levels of pollution through this more flexible approach.

Agreements will include: a commitment to superior environmental performance; an environmental management system; specific waste reduction goals; any approvals replaced by the agreement; any operational flexibility and variances granted; a commitment to release periodic performance evaluations; and a plan to involve public participation. Both regulated and non-regulated environmental impacts are eligible for inclusion in the Agreement.

WDNR and the participating company are signatories to the agreement, however other parties can be involved in the negotiating process. The participating company is required to include public participation in this process and WDNR will provide an opportunity for public comment for at least 30 days on any proposed issuance, amendment, or revocation of a Cooperative Environmental Agreement. The law also allows for public informational meetings if desired.

I. Current Status

A. Applications to the Program

Application to the Environmental Cooperation Pilot Program is a two-step process. Interested companies first submit a preliminary application, or letter of intent, which outlines their interest in the Program, their commitment to superior environmental performance through implementing an environmental management system¹, and their initial flexibility requests.

A decision to accept a facility into the Program is made by the WDNR Secretary based on this letter of intent. For those companies that are accepted, an official application is then made in the form of a Draft Agreement that outlines their commitment to the Program's principles and their requests for flexibility. The Draft Agreement serves as the starting point for negotiating the Cooperative Agreement between the WDNR and the participating facility.

1. Letters of Intent

During the calendar year 1998, two companies submitted letters of intent to participate in the Environmental Cooperation Pilot Program: Navistar International in Waukesha and Kohler Company's generator facility in the Town of Mosel.

At the time of this report in the autumn of 1999, five additional companies have submitted letters of intent for the Program. These are:

1. Cook Composites and Polymers—a chemical manufacturing facility located in Saukville;
2. Madison Gas and Electric—an electric and natural gas utility located in Madison;
3. Northern Engraving—a surface coating facility in Sparta;
4. Nestlé USA—food processing facilities in Eau Claire, Jefferson, and Stoughton;
5. Wisconsin Electric—Pleasant Prairie Power Plant;

Interest has grown in the Program during this past year, in large part due to the signing of a Memorandum of Agreement (MOA) between WDNR and EPA Region V in March 1999. In brief, this MOA builds a partnership between the two agencies to facilitate regulatory innovation, primarily by involving EPA early in the cooperative agreement negotiation process (see subheading D of this document for further information on this agreement).

¹ According to Wisconsin Statute 299.80, companies participating in the Environmental Cooperation Pilot Program are required to implement an environmental management system that is "based on the standards...issued by the International Organization for Standardization, or an alternative environmental management system that is acceptable to the department". Participating companies will be required to document their environmental management systems and to provide baseline and annual performance evaluations to the department, however, third-party certification of the EMS is not a requirement.

2. Draft Agreements

As explained above, once a company is accepted into the Environmental Cooperation Pilot Program they submit a Draft Agreement that establishes their commitment to the principles of the Program. These principles include: creation of an interested persons' group, implementation of an environmental management system (EMS), commitment to superior environmental performance, setting specific pollution limits, provision of baseline and periodic performance evaluations, and commitment to reporting violations.

The Draft Agreement is also the mechanism for the company to submit their requests for operational flexibility and variances. These requests are the starting point for negotiations with the WDNR.

Three Wisconsin companies had submitted Draft Agreements as of September 1999:

- 1) Navistar International (Waukesha);
- 2) Cook Composites and Polymers (Saukville).
- 3) Kohler-Generator (Mosel);

Once received by the WDNR, Draft Agreements are made available to the public on the WDNR's website. These drafts are also sent to EPA Region V for their review prior to beginning negotiations. These Draft Agreements can be viewed on the following web address: <http://www.dnr.state.wi.us/org/caer/cea/ecpp/agreements/agreements.htm>

Below is a table summarizing progress made on the Cooperative Agreements with particular facilities:

COOPERATIVE AGREEMENT PILOTS (STATE CONTACTS)	FACILITY CONTACT	DOCUMENTS RECEIVED and EMS STATUS
NAVISTAR (Engine Manufacturer) Susan Lindem Lindes@dnr.state.wi.us (608) 267-0567	Matt Redmann Navistar Intl. P.O. Box 907 Waukesha, WI 53187 Matt.redmann@navistar.com (P) 414-548-1682/(F) 548-1672	Submitted letter of intent 5/29/98 Submitted DRAFT agreement 7/15/99 Completed Baseline Survey 9/98 Projected ISO certification: Fall of 2000
KOHLER-GENERATOR (Generators) Jerry Rodenberg Rodenj@dnr.state.wi.us (608) 266-7715	Randy Kraemer 444 Highland Dr. Mail Stop 203 Kohler, WI 53044 Randy.kraemer@kohlerco.com (P) 920-457-4441/(F) 459-1682	Submitted letter of intent Submitted DRAFT agreement 6/16/99 Completed Baseline Survey 8/98 Won't be ISO 14001 certified, but set EMS objectives and targets in 1995
NORTHERN ENGRAVING (surface coating) Mark Harings Harinm@dnr.state.wi.us (715) 831-3263	Randy Nedrelo Northern Engraving Corp. 803 S. Black River St. P.O. Box 377 Sparta, WI 54656 NECenymn@centuryinter.net (P) 608-269-6911/(F) 269-9547	Submitted letter of intent 5/21/99 ISO 14001-certified
COOK COMPOSITES and POLYMERS (chemical manufacturing) Lynn Persson Perssl@dnr.state.wi.us (608) 267-3763	Mike Gromacki P.O. Box 419389 Kansas City, MO 64141-6389 Gromacki@ccponline.com (P) 816-391-6000/(F) 391-6337	Submitted letter of intent 3/23/99 Submitted DRAFT agreement, 8/20/99
NESTLE (food processing) Kim McCutcheon Mccutk@dnr.state.wi.us (608) 267-0876	Walter Carey 60 Boardman Road New Milford, CT 06776 Walter.carey@us.nestle.com (P) 860-355-7570/(F) 355-7561	Submitted letter of intent 7/12/99 for three facilities in Eau Claire, Stoughton and Jefferson
WEPCO (WI Electric) (electric utility) John Shenot Shenoj@dnr.state.wi.us (608) 267-0802	Brian Borofka/Stephen Downs 333 W. Everett P.O. Box 2046 Milwaukee, WI 53201 Brian.borofka@wepco.com (P) 414-221-4872 (F) 414-221-2169	Submitted letter of intent 8/31/99
MGE (Madison Gas & Electric) (electric and natural gas utility) John Shenot Shenoj@dnr.state.wi.us (608) 267-0802	Mike Ricciardi/Jill Stevens P.O. Box 1231 Madison, WI 53701-1231 Mr Ricciardi@mge.com jstevens@mge.com (P) 608-252-5627/(F) 252-7098	Submitted letter of intent 6/4/99 Completed baseline survey 8/98 Plan to implement EMS in 2000, but not ISO-certified system.

a. Examples of Flexibility Requests

Some examples of flexibility requests made by companies that have submitted Draft Agreements to date include:

1. Reduced sampling frequency for wastewater discharges
2. Removal of requirements to monitor for pollutants not in the system based upon previous analyses.
3. One-stop permitting with one individual contact from the WDNR.
4. Simplification of regulations and standards.
5. Reduced inspections as a result of implementation of an ISO 14001 Environmental Management System.
6. Public Sector endorsement of the Project, good public relations from the WDNR, and credit for previous pollution prevention activities.
7. Regulatory flexibility will be used where applicable to negotiate future agreements.
8. Single permit to cover a facility with a single, simplified reporting form.
9. A facility-wide permit cap.
10. Recognition of the Cooperative Agreement as enforceable as a Title V air permit.
11. Administrative approval of reuse of waste products.
12. Extension of an effective permit period in order to allow for evaluation and potential implementation of an alternate pollution prevention technology.

3. Negotiations

Following receipt of the company's Draft Agreement, WDNR staff will meet internally to draft a counter-proposal. This counter-proposal is essentially an assessment of WDNR's ability or willingness to accommodate the flexibility and variance requests, as well as any additional environmental performance items for discussion. Negotiations commence after the counter-proposal is drafted and sent to the pilot company and EPA staff.

As of September 1999, WDNR staff had held internal planning meetings to draft a counter-proposal for Kohler-Generator which was then sent to the company.

A. Public Information Process

The Environmental Cooperation Pilot Program is intended to be a transparent process on several levels. First of all, participating companies are required to organize an interested persons group which will provide input on the company's EMS and review the company's performance under the cooperative agreement. Secondly, a Cooperative Agreement Advisory Group consisting of representatives from participating facilities, Wisconsin Manufacturers and Commerce, environmental organizations, US EPA Region V and the Wisconsin Department of Commerce has been organized to evaluate the overall Program's performance (see section C for additional information on this group).

There is also a detailed public information process that the WDNR is required to follow as it pursues cooperative agreements with pilot facilities. Under this process, all agreements entered into and documents received by the WDNR as part of the Environmental Cooperation Pilot Program are subject to public review. As per statute 299.80, the WDNR will “provide at least 30 days for public comment on any proposed issuance, amendment or revocation of a cooperative agreement”. Draft Agreements and Letters of Intent are also items of public record.

The primary mechanism for distributing this information to the public will be through the WDNR’s website. Documents relating to the Environmental Cooperation Pilot Program can be accessed at the following address: www.dnr.state.wi.us/org/caer/cea/iso/ecpp/ecpp.htm

B. Evaluation

1. Cooperative Agreement Advisory Group

With the passage of the Environmental Cooperation Pilot Program, it was recognized that WDNR would need a group to work with the Agency to review the Program and act as a sounding board for the Department on the success and failures of this Program. Among the tasks outlined for this group were the following:

- Developing performance measures for the Program as a whole;
- Deciding how to make data on the Program readily accessible;
- Developing definitions for “success” of the Program;
- Monitoring the workings of WDNR and EPA under the Memorandum of Agreement;
- Assisting in the preparation of the annual report to the Legislature

This group, known as the Cooperative Agreement Advisory Group, consists of 15 appointed members representing each of the pilot companies, the Wisconsin Department of Commerce, environmental organizations, and Wisconsin Manufacturers and Commerce. The Advisory Group held its first meeting on August 13, 1999 in Madison.

At the August 13th meeting the group discussed performance measures for the Program, and agreed that priorities for measurement would be ranked according to their impact on reinvention. The group was also assigned the task of proposing additional criteria for measuring program performance that they will submit at the next meeting to be held Friday, October 15, 1999 in Madison. All meetings of the Cooperative Agreement Advisory Group are open to the public. Ground rules for handling public participation at the meetings will be decided at the October meeting.

2. National Database on Environmental Management Systems

Facilities participating in Wisconsin’s Environmental Cooperation Pilot Program are required to provide baseline data and periodic reports highlighting their performance as a result of adopting environmental management systems (EMS). Most of the cooperative agreement pilots are accomplishing this by contributing information to the National

Database on Environmental Management Systems, an ongoing study funded by USEPA's Office of Water and managed by the University of North Carolina and the Environmental Law Institute.

This research project, the first of its kind to be undertaken on a national level, is addressing the question of whether EMS implementation and certification does in fact achieve equal or better results than regulatory compliance alone. The study will also measure the effect EMS's have on other criteria such as economic performance, pollution prevention and interested party involvement.

The first public report on the national database entitled, "The Effects of ISO 14001 Environmental Management Systems on the Environmental and Economic Performance of Organizations, Project Summary I" was issued on March 27, 1999. The first report contains demographic data about facilities that have contributed data to this system. This public report can be accessed on the following website: <http://www.eli.org/isopilots.htm>.

3. Public Confidence

One of the benefits anticipated from the Environmental Cooperation Pilot Program is that this process will make it easier for local citizens to get involved in the environmental approval process. Based on the pilot company's requirement to establish and interact frequently with a local interested persons' group, it will be necessary to measure if this type of interaction is perceived as beneficial to the local stakeholders.

A plan to measure citizen participation and satisfaction is under development. According to this plan, social scientists from the WDNR would hold a series of 2 to 3 focus groups with interested persons groups established by the companies. This initial investigation would help determine if these groups are representative of the local community. If it is established that the groups are representative cross-sections of local stakeholders, the next stage would be to meet again with the interested persons groups after they have been involved with the company on the cooperative agreement process.

WDNR will develop a list of issues to discuss with these groups in consultation with the Cooperative Agreement Advisory Group. Some initial issues that have surfaced include: availability of information on the facility, understanding of the environmental impacts, time commitments and approval rating of the process. Education on the current permit and approval system would need to be a component of this survey process.

C. Working with the US Environmental Protection Agency

1. USEPA/WDNR Memorandum of Agreement

The first Memorandum of Agreement (MOA) between a state and EPA outlining reinvention of government was signed by Wisconsin Lt. Governor Scott McCallum, WDNR Secretary George E. Meyer and acting Regional Administrator for USEPA Region V, David A. Ullrich on March 25, 1999. The document guides the working

partnership of both agencies to fulfill the Joint State/EPA Agreement to Pursue Regulatory Innovation (April 1998), as well as the objectives of Wisconsin's Environmental Cooperation Pilot Program—to pilot and evaluate innovative environmental regulatory methods.

Under this Memorandum of Agreement, the EPA and WDNR agree on the need to experiment with new approaches to improve the nation's environment. These new approaches can help identify cleaner, cheaper, smarter ways to improve environmental performance.

This partnership fosters an environment in which WDNR innovations are supported and encouraged in order to develop better ways of achieving environmental and ecosystem goals. As the front-line delivery agent for environmental programs, WDNR has first hand knowledge of the environmental problems, facility issues, and community concerns that puts it in a unique position to develop practical solutions that are environmentally protective as well as efficient and effective. EPA will support WDNR's efforts with timely input and consultation that demonstrates openness and flexibility while observing requirements of the federal statutes.

The mechanism for inter-agency collaboration on cooperative agreements is a team of representatives from both agencies, called the Interagency Innovations Team (IIT). This team will act as the communications center while each pilot agreement is being selected, negotiated and implemented. The IIT will also identify and address programmatic issues such as: permit and program modification procedures, enforcement and compliance schedules, and the context and implementation of the MOA. The team will also make sure staff in both agencies and in participating pilot facilities understand these issues.

In summary, the MOA details the specific phases needed to implement the Environmental Cooperation Pilot Program and the agencies' involvement in these projects. The inter-agency partnership will avoid duplication of effort and ensure that both agencies' needs are met in a timely manner.

A copy of this agreement is attached as Appendix A to this document. Additionally copies can be obtained at the following website:

<http://www.dnr.state.wi.us/org/caer/cea/iso/ecpp/ecpp.htm>

E. Challenges

Recruiting small businesses into the Environmental Cooperation Pilot Program continues to be a challenge. In general small businesses are at a disadvantage to participate due to resource shortages, concern with engaging stakeholders, and perhaps most important of all: not needing regulatory flexibility due to their limited regulatory exposure. Business Sector Specialists have engaged in outreach activities with small businesses across the state, and the Bureau of Cooperative Environmental Assistance (CEA) has made information materials on EMS implementation for small businesses available.

One possible approach that has been suggested is that significant elimination of regulatory requirements be introduced for small businesses that can demonstrate environmental conscientiousness.

Two other challenges for the Program include: educating companies about the stakeholder involvement process, and determining criteria for success in developing performance measures. However, progress has recently been made on both of these fronts.

Educational materials on stakeholder involvement are being distributed to the cooperative agreement pilots, including a May 1999 EPA publication entitled: "Constructive Engagement Resource Guide: Practical Advice for Dialogue Among Facilities, Workers, Communities and Regulators".

Performance measurement criteria for the Environmental Cooperation Pilot Program as a whole are being developed by the Cooperative Agreement Advisory Group. A lengthy discussion on this topic was held at the Group's August meeting, and members are in the process of submitting additional priorities for measuring Program success. This will continue to be a priority for the group over the next several months.

III. Future Steps

The following objectives have been set for the next phase of this program:

1. By January 2000, the first two Cooperative Environmental Agreement will have been negotiated and signed;
2. By January 2000 an additional negotiation team will have been organized to begin processing a third Cooperative Environmental Agreement;
3. By January 2000 three additional Draft Cooperative Agreements will have been received by participating companies;
4. By December 2000 an additional three Cooperative Environmental Agreements will have been negotiated and signed;
5. By December 2000 all ten Cooperative Agreement slots will have been filled;
6. By March 2000 Cooperative Agreement Advisory Group will finalize development of performance measures for the Program;
7. By December 2000 WDNR will begin its assessment of citizen participation in pilot companies' interested persons' groups.